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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE: LIN 01 194 54183

OFFICE: NEBRASKA SERVICE CENTER

DATE: JAN 22 2003

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

**PUBLIC COPY**

INSTRUCTIONS:

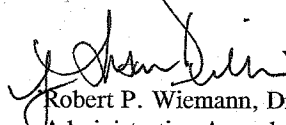
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a financial services agency with 70 employees and a gross annual income of \$200,000. It seeks to employ the beneficiary as a registered representative for an unstated period.

The director denied the petition because he found that the petitioner had failed to demonstrate that the beneficiary is fully licensed to fully perform the duties of the proffered position.

On appeal, the petitioner submits a brief, a copy of the beneficiary's license as a registered agent in the State of Michigan, and two job postings for financial services positions from the internet site "monster.com."

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical knowledge application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

In the petition, the petitioner stated that the title of the proffered position is registered representative and that the duties of the position are "Insurance and Financial Product Sales."

The director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the director requested a complete, detailed description of the duties of the proffered position and evidence that the position qualifies as a specialty position pursuant to one of the four alternative criteria of 8 C.F.R. 214.2(h) (4) (iii) (A).

The director also requested evidence that the beneficiary holds an unrestricted Michigan state license to fully practice the proffered position, or evidence that no such license is required.

In response, the petitioner submitted a letter and eight job listings from various financial services firms seeking sales people. The petitioner also submitted the beneficiary's license from the Michigan Department of Consumer & Industry Services, Office of Financial & Insurance Services. That license is endorsed "Accident and Health, Life."

In the letter, the petitioner stated that the beneficiary is licensed to perform the duties of a registered representative except that he may not sell those products and services which involve stocks, bonds, futures, and commodities. The director noted that, in order to sell securities, the beneficiary must take the Series 7 and 63 exams, and that he is prohibited by law from taking them unless he is authorized to work in the United States.

The director denied the petition because he found that the beneficiary is not licensed to fully practice the proffered position.

On appeal, counsel submitted a letter from the petitioner stating that the petitioner is licensed as a resident agent, but restricted from selling stocks, bonds, futures, and commodities. The petitioner reiterated his previous statement that the beneficiary cannot obtain the Series 7 and 63 securities licenses unless the petition is granted and he is authorized to work in the United States.

As the director noted in the denial letter, 8 C.F.R. 214.2(h) (4) (v) (A) states that:

If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1A nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

The petition states that the proffered position is that of registered representative, and that the duties of the position are

to sell insurance and financial products. In response to a Request for Evidence, the petitioner stated that the applicant is not licensed to sell securities, but noted that he is qualified to sell two classes of insurance. In addition to that limited practice of insurance sales, the beneficiary may be permitted to sell a few less regulated financial products, such as annuities. The beneficiary is not licensed to fully practice the proffered position.

The petitioner states that the beneficiary is unable to obtain licensure without permission to work, and unable to obtain permission to work without licensure. 8 C.F.R. 214.2(h)(4)(v)(B) and (C) contain limited exceptions to the licensure requirement of 8 C.F.R. 214.2(h)(4)(v)(A). Counsel, however, has shown neither that the beneficiary holds the requisite license nor that he qualifies for either of those limited exceptions.

Beyond the decision of the director, the Service notes that although the job listings submitted by the petitioner require that applicants possess a bachelor's degree, only one of the listings notes a preference for a degree in any particular fields. That listing states that the degree should preferably be in finance, accounting or business. As those job listings do not show that parallel positions require a bachelor's degree in a specific specialty, they do not support the proposition that the proffered position is a specialty occupation.

The evidence is insufficient to demonstrate that the proffered position is a specialty occupation. That deficiency in the evidence need not be further addressed, however, as the decision of denial was based upon another ground and has been upheld on that other ground.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.